

KELLER ROHRBACK L.L.P.

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October 16, 2019

VIA ELECTRONIC FILING CM/ECF

The Honorable William H. Orrick
United States District Court, N.D. California
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *In re: Juul Labs Inc., Marketing, Sales Practices, and Products Liability Litigation*, 19-md-02913-WHO

Dear Judge Orrick:

I respectfully request appointment to the Executive Committee of the Steering Committee in the Juul Labs multidistrict litigation, or any other position the Court feels is appropriate. I have filed suits on behalf of the school districts and counties on the front lines of the youth vaping epidemic. This includes King County, Washington, with a public health department that serves a population of more than 2.2 million (*King County v. Juul Labs, Inc., et al.*, 19-cv-1664 (W.D. Wash.)). For years, schools and public health departments ran anti-tobacco initiatives that drove down smoking rates, particularly among teenagers. Yet, in a few short years, Juul reversed this progress, causing a resurgence in youth nicotine addiction. Juul and its co-defendant Altria will no doubt fight these claims—and have every right to do so, but it is imperative that this litigation recognize and include the interests of schools and local governments in abating the public health crisis caused by defendants. Any solution must address the problem of youth nicotine addiction that Juul and others have caused. I would be honored to serve in a leadership position in this important, public health litigation.

Throughout my career, I have taken on corporations that have abused their positions of privilege and power. I have been honored to represent state and local governments, employees, consumers, and investors, in a wide variety of complex and class action cases against a broad array of Fortune 500 companies. And I am grateful to work with a group of outstanding Keller Rohrbach attorneys, including Derek Loeser, Gretchen Cappio, and Alison Gaffney, who are also working on the Juul case on behalf of our governmental clients.

Keller Rohrbach prides itself on serving the public interest by taking on cases that make a tangible difference in our communities. We represent dozens of cities, counties and tribes in *In re National Opiate Litigation*, MDL 2804 (N.D. Ohio), an enormously important litigation seeking to hold opioid manufacturers and distributors accountable for devastating communities across the country. Keller Rohrbach's managing partner, Lynn Sarko, serves on the Plaintiffs' Executive Committee in the litigation, and I serve on several committees in the case, including the Manufacturer Defendant Committee, the Law & Briefing Committee, and the Expert Committee. As a member of the Manufacturer Defendant Committee, I played a leading role in developing the case against Mallinckrodt, the leading manufacturer of generic opioids in the country. As a member of the Law & Briefing Committee, I was in charge of multiple substantial, dispositive motions, and will continue in this capacity during the October MDL trial. As a member of the Expert Committee, I prepared Plaintiffs' medical and diversion experts for deposition and deposed multiple defense experts. Working with leading health economists and public health experts, my Keller Rohrbach colleagues and I have played a critical role in building the public nuisance case

against opioid manufacturers and distributors—work that is directly relevant to the claims brought by school districts and other public entities in this case.

(1) Relevant Litigation Experience.

Effective leadership in this case will require mastery of several areas of law, including among others, public nuisance, consumer protection, RICO, and negligence. My firm's and my work on behalf of plaintiffs includes extensive experience in each of these areas. (*see* Exhibit A).

Leadership Experience in Public Health Litigation. The opioid litigation is an enormous undertaking in which many plaintiffs' firms are working together to take on well-funded and represented companies accused of causing enormous societal harm. It is a powerful example of what teamwork can accomplish. As set forth above, I serve on several committees within the MDL. The opioid litigation has many parallels to this case, particularly the public health impact on youth, and the burdens imposed on local governments.

Consumer Protection, RICO, Fraud and Negligence Litigation. I have extensive experience prosecuting class action cases, including cases that involve consumer protection laws.

I worked on *In re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 (N.D. Cal.), a high-profile multidistrict litigation concerning alleged conspiracies to cheat on emissions tests and to conceal vehicles' true emission levels from regulators and the public. Keller Rohrbach managing partner Lynn Sarko currently serves on the Plaintiffs' Steering Committee in the case, and I, along with several of my Keller Rohrbach colleagues, support his work.

I also was one of the lead attorneys in a group of high-stakes mortgage-backed securities cases on behalf of the Federal Home Loan Banks of Chicago, Indianapolis, and Boston against numerous Wall Street and international banks. These were complex, multi-party fraud and negligence cases pursued in state and federal courts across the country. Keller Rohrbach's clients recovered hundreds of millions of dollars to date in the cases.

Experience in Cases Involving Bankruptcy. It is far from clear whether Juul will survive the controversy in which it is now engulfed. Bankruptcy is a very real possibility. Keller Rohrbach has significant bankruptcy and financial restructuring experience and expertise, as demonstrated by the involvement of my partners Gary Gotto and Chris Graver in *21st Century Oncology*, as well as in other matters, including *In re Enron Corp. ERISA Litigation*, MDL No. 1446 (S.D. Tex.) (obtaining stay relief and successfully defending against a motion to subordinate claims); and *In re WorldCom, Inc. ERISA Litigation*, No. 02-4816 (S.D.N.Y.) (successfully defending against a motion to subordinate claims and negotiating a simultaneous resolution of claims in the bankruptcy and district courts).

(2) The Names And Contact Information Of Judges From Cases Listed Above.

A list of the cases discussed above along with contact information for those judges is attached as Exhibit B. Other judges in this district know my firm well and have appointed my partners, including Derek Loeser and Lynn Sarko, to leadership positions in multiple cases. These judges include Judge Breyer (Volkswagen MDL No. 2672), and Judge Chhabria (Facebook MDL No. 2843).

(3)-(6) Willingness To Commit Time And Resources, To Work Cooperatively, And Position

Page 3

Sought.

This litigation will involve a long-term commitment, with work extending beyond any resolution between the parties considering the significant injunctive and abatement relief that is sought, particularly by government entities. If appointed by the Court to serve as a member of the Steering Committee, I will be in it for the long haul. I am well aware of the substantial time and financial commitment required to prosecute complex litigation and am willing and able to commit to this process. I am not a lead or co-lead counsel for any other MDL, and I can commit the majority of my time to serving in a leadership role in this litigation. Further, Keller Rohrbach will commit the significant personnel and financial resources that will be necessary to prosecute this matter efficiently and effectively. Moreover, my firm will advance all costs without use of third-party litigation funding.

My firm and I have demonstrated our ability to work cooperatively with other counsel to advance the interests of plaintiffs and class members. This is one of our core values. Keller Rohrbach works collaboratively with counsel in innovative ways to obtain significant results, and has been praised by courts for its ability to do so. I and my Keller Rohrbach colleagues pursue cases with passion and diligence, but without animosity or incivility.

Because of the complex and multidimensional nature of this litigation, with three somewhat distinct types of cases—individual, consumer class, and governmental—the interests of plaintiffs and proposed class members will be served by appointing three Co-Lead Counsel to facilitate efficient and effective coordination of simultaneous efforts on multiple fronts. In addition, the lead counsel should be supported by a robust Steering Committee capable of creating multiple trial teams that can prepare several cases for trial without delay. The leadership structure outlined in Exhibit C, consisting of three Co-Leads and a nine-person Executive Committee directing a diverse and talented PSC, accomplishes this objective. It is the result of extensive meetings and discussion by multiple counsel as to how to best move this critical, massive litigation forward. I support the leadership structure set forth in Exhibit C, and I have the support of the 22 lawyers identified on those committees. I also support those lawyers for their respective positions.

(7) Any Other Considerations That Qualify Counsel For A Leadership Position.

Diversity is a critical value in all aspects of our legal system, including the selection of MDL leadership. The leadership proposal set forth in Exhibit C recognizes this by proposing a diverse group of outstanding lawyers. The proposed leadership achieves close to a 50/50 split of women and men for key roles in the MDL. According to data gathered by ALM, the percentage of MDL leadership appointments going to women was roughly 30%. And while there is limited data on the selection of minorities for MDL leadership positions, those percentages are undoubtedly even lower. Here, two of the proposed executive committee members are minority partners. All of the firms involved in proposing this leadership structure have made a deliberate effort to actively promote diversity within the leadership of this critical MDL. As a minority law firm partner—one of the few according to recent statistics—I support and applaud these efforts.

Respectfully submitted,



Dean N. Kawamoto

Attachments

cc: All Counsel on ECF